

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8678 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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KANCHAN KACHARO MOHANBHAI MACHHI

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner  
MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT  
Date of decision: 19/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective  
parties.

The petitioner challenges the order of preventive  
detention dated 11th September, 1998, made by the  
District Magistrate, Bharuch, under the powers conferred  
upon him under sub-section (1) of section 3 of the  
Gujarat Prevention of Anti Social Activities Act, 1985  
(hereinafter referred to as 'the Act').

In the grounds of challenge, it is alleged that the petitioner is a 'bootlegger' within the meaning of section 2 (b) of the Act, and that three offences for violation of prohibition law have been registered against the petitioner. In each of the said three cases, the petitioner has been released on bail. The petitioner is alleged to be dealing in i.e. possessing and selling the country liquor, and in each of the aforesaid cases, large quantity of country liquor was found from his possession. Besides, the Detaining Authority has relied upon the statements of the witnesses, whose identity and other particulars have been withheld. It appears that not only the petitioner has been dealing in country liquor, his activities, otherwise, also are prejudicial to the maintenance of public order. Further, earlier also the petitioner had been detained under the Act. The Detaining Authority has recorded that he had personally verified the genuineness of the statements made by the witnesses and he has recorded his personal satisfaction to the effect that the petitioner's activities are injurious to the health of public at large and are also detrimental to the maintenance of public order.

The impugned order has been challenged on the grounds (a) that in two of the criminal cases registered against the petitioner, i.e. CR No. 140/98 and CR No. 242/98, the petitioner has not been supplied the report of the Chemical Analyser. The petitioner, under his representation, had demanded the copies of the said report. However, even after such demand, the report was not supplied to the petitioner; (b) that though the offences have been registered in the month of March, April and July 1998, and the statements of the witnesses were recorded on 11th, 14th and 18th August, 1998, the impugned order has not been made immediately thereafter and has been made on 11th September, 1998 i.e. long after the cause of action arose; (c) that the privilege claimed under section 9 (2) of the Act is unwarranted; and (d) that in any view of the matter, the petitioner's activities can not be said to be detrimental to the maintenance of public order.

Neither of the above contention has been controverted. Neither the Detaining Authority has made counter-affidavit, nor the records are brought before this court for its perusal. In absence of effective contest, or even a bare denial, the grounds of challenge

are required to be accepted. There is no gainsaying that if at all the samples collected from the petitioner were sent for analysis by the Chemical Analyser, the report of such Chemical Analyser would be a vital document for the purpose of recording satisfaction of the Detaining Authority. It must, therefore, be held that the petitioner is deprived of vital document and his right to make an effective representation is thereby jeopardised. The action being violative of Article 22 (5) of the Constitution of India, the impugned order is vitiated.

Petition is, therefore, allowed. The impugned order dated 11th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI